

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,
Appellant,
vs.
KIMI YAMAMOTO,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court
for the Territory of Hawaii.

Filed

JUN 28 1916

F. D. Washington,
Clerk

No. 2803

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For the Ninth Circuit.

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Names and Addresses of Attorneys.

For Petitioner, KIMI YAMAMOTO:

THOMPSON, MILVERTON & CATHCART,
Campbell Block, Merchant Corner Fort
Streets, Honolulu, Hawaii.

For Respondent, RICHARD L. HALSEY, Esq.,
United States Immigration Inspector-in-
charge at the Port of Honolulu.

S. C. HUBER, Esq., United States District At-
torney, Honolulu, Hawaii. [1*]

*In the United States District Court in and for the
District and Territory of Hawaii.*

No. 91.

In the Matter of the Application of KIMI YAMA-
MOTO, for a Writ of Habeas Corpus.

**Order Extending Time to April 15, 1916, to Transmit
Record on Appeal.**

Now on this 16th day of March, A. D. 1916, it
appearing from the representations of the clerk of
this Court, that it is impracticable for said clerk to
prepare and transmit to the clerk of the Ninth Cir-
cuit Court of Appeals, at San Francisco, California,
the transcript of the record on assignment of error
in the above-entitled cause, within the time limited
therefor by the citation heretofore issued in this
cause, it is ordered that the time within which the
clerk of this Court shall prepare and transmit said
transcript of the record on assignment of error in

*Page-number appearing at foot of page of original certified Record.

this cause, together with the said assignment of errors and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to April 15th, 1916.

Dated, Honolulu, T. H., March 16th, 1916.

CHAS. F. CLEMONS,

Judge, U. S. District Court.

Due service of the above order, and receipt of a copy thereof are hereby admitted this 16th day of March, A. D. 1916.

J. W. CATHCART.

By C. S. FRANKLIN,

[Endorsed]: 91. In the U. S. District Court, Territory of Hawaii. In the Matter of the Application of Kimi Yamamoto for a Writ of Habeas Corpus. Order Extending Time. Filed Mar. 16, 1916. Geo. R. Clark, Clerk. By Wm. L. Rosa, Deputy Clerk.
[2]

*In the United States District Court in and for the
District and Territory of Hawaii.*

No. 91.

In the Matter of the Application of KIMI YAMAMOTO, for a Writ of Habeas Corpus.

**Order Extending Time to May 15, 1916, to Transmit
Record on Appeal.**

Now on this 15th day of April, A. D. 1916, it appearing from the representations of the clerk of this Court, that it is impracticable for said clerk to pre-

pare and transmit to the clerk of the Ninth Circuit Court of Appeals, at San Francisco, California, the transcript of the record on assignment of error in the above-entitled cause, within the time limited therefor by the citation heretofore issued in this cause, it is ordered that the time within which the clerk of this Court shall prepare and transmit said transcript of the record on assignment of error in this cause, together with the said assignment of errors and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to May 15, 1916.

Dated, Honolulu, T. H., April 15, 1916.

CHAS. F. CLEMONS,

Judge, U. S. District Court.

Due service of the above order, and receipt of a copy thereof are hereby admitted this 15th day of April, A. D. 1916.

J. W. CATHCART.

By C. S. FRANKLIN.

[Endorsed]: #91. In the United States District Court, for the Territory of Hawaii. In the Matter of the Application of Kimi Yamamoto for a Writ of Habeas Corpus. Order Extending Time to Transmit Record on Appeal. Filed Apr. 15, 1916. George R. Clark, Clerk. By Wm. L. Rosa, Deputy Clerk.

*In the United States District Court in and for the
District and Territory of Hawaii.*

No. 91.

In the Matter of the Application of KIMI YAMA-
MOTO, for a Writ of Habeas Corpus.

**Order Extending Time to June 15, 1916, to Transmit
Record on Appeal.**

Now, on this 15th day of May, A. D. 1916, it appearing from the representations of the clerk of this Court, that it is impracticable for said clerk to prepare and transmit to the clerk of the Ninth Circuit Court of Appeals, at San Francisco, California, the transcript of the record on assignment of error in the above-entitled cause, within the time limited therefor by the citation heretofore issued in this cause, it is ordered that the time within which the clerk of this Court shall prepare and transmit said transcript of the record on assignment of error in this cause, together with the said assignment of errors and all papers required by the praecipe of plaintiff in error herein, to the clerk of the Ninth Circuit Court of Appeals, be, and the same is hereby extended to June 15, 1916.

Dated Honolulu, T. H., May 15th, 1916.

CHAS. F. CLEMONS,

Judge, U. S. District Court.

Due service of the above order, and receipt of a

copy thereof are hereby admitted this 15th day of May. A. D. 1916.

S. C. HUBER,
U. S. Attorney.

J. W. CARTHART.

By C. S. FRANKLIN.

[Endorsed]: #91. United States District Court, Territory of Hawaii. In the Matter of the Application of Kimi Yamamoto for a Writ of Habeas Corpus. Filed May 15, 1916. George R. Clark, Clerk. By Ray B. Rielow, Deputy Clerk. [4]

*In the United States District Court in and for the
District and Territory of Hawaii.*

No. 91.

In the Matter of the Application of KIMI YAMAMOTO, for a Writ of Habeas Corpus.

Statement of Clerk.

TIME OF COMMENCEMENT OF SUIT.

April 13, 1914: Verified petition for writ of habeas corpus, order for issuance of writ of habeas corpus, writ of habeas corpus and marshal's return thereon.

NAMES OF ORIGINAL PARTIES.

Petitioner: Kimi Yamamoto.

Respondent: Richard L. Halsey, Esq., United States Inspector of Immigration-in-charge at the Port of Honolulu.

DATES OF FILING OF THE PLEADINGS.

April 13, 1914: Petition.

May 22, 1914: Return of Richard L. Halsey, Esq.,
to Order to Show Cause.

May 27, 1915: Traverse of the return of Richard
L. Halsey, Esq., respondent.

SERVICE OF PROCESS.

April 13, 1914: Writ issued and delivered to the
United States Marshal with the following return
by the said United States Marshal: "The within
petition, order and writ of habeas corpus were re-
ceived by me on the 13th day of April, A. D. 1914,
and are returned as executed on April 13, 1914, [5]
in Honolulu, by hand, upon Richard L. Halsey,
United States Immigration Inspector-in-charge at
the port of Honolulu, by exhibiting to him the orig-
inal and handing to and leaving with him a certified
copy of the within petition, order and writ of habeas
corpus.

E. R. HENDRY,

United States Marshal.

By (Sgd.) H. H. Holt,

Chief Office Deputy.

Dated Honolulu, T. H., April 14, 1914."

HEARINGS.

May 28, 1915: Proceedings at hearing and briefs
ordered filed.

August 2, 1915: Proceedings at decision, ordering
petitioner discharged under writ herein.

The above hearings were had before the Honor-
able SANFORD B. DOLE, Judge of said Court.

DECISIONS.

August 2, 1915: Decision sustaining Traverse of the Return of respondent and discharging applicant under writ.

December 16, 1915: Judgment filed and entered
(Dole, J.)

PETITION FOR APPEAL.

February 15, 1916: Petition for appeal and order allowing same filed.

United States of America,
Territory of Hawaii,—ss.

I, George R. Clark, clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled suit; the names of the [6] original parties thereto; the several dates when the respective pleadings were filed; and account of the proceedings showing the service of the petition and writ of habeas corpus and the time when the judgment herein was rendered and the Judge rendering the same, in the matter of the application of Kimi Yamamoto for a writ of habeas corpus, number 91, in the United States District Court of the Territory of Hawaii.

IN WITNESS WHEREOF, I have hereunto set
my hand and affixed the seal of said District Court
this 23d day of May, A. D. 1916.

[Seal] GEORGE R. CLARK,
Clerk U. S. District Court, Territory of Hawaii.

*In the United States District Court in and for the
District and Territory of Hawaii.*

In the Matter of the Application of KIMI YAMAMOTO, for a Writ of Habeas Corpus, Directed to RICHARD L. HALSEY, United States Inspector of Immigration at the Port of Honolulu, Commanding and Directing Him to have and Produce the Body of the Said KIMI YAMAMOTO.

Petition for Writ of Habeas Corpus.

To the Honorable SANFORD B. DOLE and CHARLES F. CLEMONS, Judges of the United States District Court for the Territory of Hawaii:

Your petitioner, Kimi Yamamoto, respectfully shows to this Honorable Court and states:

1. That she is and during all the times hereinafter mentioned was and since the — day of —, 1897, has been a Japanese alien resident at Honolulu, city and county of Honolulu, Territory of Hawaii; and is not an alien or alien resident within the meaning of the laws of the United States hereinafter referred to. [8]

2. That your petitioner is imprisoned and restrained of her liberty by Richard L. Halsey, Esq., Inspector-in-charge at the United States Immigration Station at Honolulu, aforesaid, without authority of law.

3. That the cause and pretense of such imprisonment and restraint according to the knowledge and

belief of your petitioner, is, that the Secretary of Labor of the United States of America has, by his warrant of deportation, ordered your petitioner to be deported from the port of Honolulu to the Empire of Japan, and that such imprisonment and restraint is for the purpose of such deportation; that the alleged reason as shown by and contained in said warrant for such deportation as your petitioner is informed and believes, is, that your petitioner practiced prostitution, contrary to the provisions of section 3 of the Act of Congress of March 26, 1910, entitled "An Act to Amend an Act Entitled 'An Act to Regulate the Immigration of Aliens into the United States' approved February 20th, 1907."

That your petitioner has no copy of the warrant of deportation hereinbefore referred to, which he can attach to or make a part hereof.

That said imprisonment and restraint is illegal, unlawful, contrary to the provisions of the Constitution of the United States and of the laws of the United States of America, and in that behalf, your petitioner alleges and says, she had not at or prior to the time of the making of the said order of deportation hereinbefore referred to, or at [9] the time of the issuance of the warrant of arrest, hereinafter referred to, practiced prostitution.

And your petitioner is further informed and believes, and upon such information and belief alleges it to be the fact, that heretofore and on, to wit, the 15th day of November, A. D. 1913, the Secretary of Labor issued a warrant, directed to the Inspector-in-charge of the Immigration Station at the port of

Honolulu, or any inspector, directing and commanding him or such inspector to arrest your petitioner, and to require her to show cause to him or to such inspector so arresting her, why she should not be deported to the country whence she came, to wit, the Empire of Japan, in that she had at said Honolulu practiced prostitution; that pursuant to said warrant aforesaid, your petitioner was arrested and caused to be brought before Harry B. Brown, Esq., an inspector of immigration at the port of Honolulu, and thereupon a pretended hearing was had and evidence adduced by the said Harry B. Brown, Esq., in respect to the said charge against your petitioner, but no evidence either competent or otherwise was adduced before the said Harry B. Brown, as inspector as aforesaid, showing or tending to show that your petitioner practiced prostitution; that thereafter and on, to wit, the — day of March, A. D. 1914, the Secretary of Labor of the United States of America issued the warrant of deportation as aforesaid.

That the warrant of deportation so issued as aforesaid by the Secretary of Labor of the United States of America is illegal and void, in this, that the same is not based upon any valid complaint or charge, and not [10] supported by any evidence showing or tending to show that your petitioner, within the United States of America at any time or at all, practiced prostitution.

That the said warrant of deportation, so issued as aforesaid by the Secretary of Labor of the United States of America, is illegal and void in this: That

the same is not based upon any valid complaint or charge, and is not supported by any evidence showing or tending to show that your petitioner is unlawfully within the United States of America. That the said warrant is illegal and void, because the same has been issued by the said Secretary of Labor without there first having been any hearing permitted or allowed to your petitioner on the matters and things in said warrant alleged against her, as the reason why she is unlawfully within the United States of America, and the reason why she should be deported therefrom.

And petitioner further says, that your petitioner has been deprived of her constitutional privilege, in that she has been deprived of her liberty without due process of law, for the reason that she was not allowed the assistance of counsel throughout the pretended examination hereinbefore set forth; and petitioner further says, that your petitioner was arrested on the warrant issued by the Secretary of Labor as aforesaid, upon information furnished by the said Harry B. Brown, Esq., as your petitioner is informed and believes; that the so-called hearing was had before the said Harry B. Brown, Esq., and your petitioner, on information and belief, alleges that the said Harry B. Brown, Esq., or the inspector-in-charge under whom he was acting recommended that your petitioner be deported and that [11] the Secretary of Labor acted upon such recommendation without any critical or sufficient examination of the so-called evidence in the case, and that therefore your petitioner has been deprived of her

liberty, and is about to be deported from the United States of America without the said evidence alleged against her being reviewed or considered by the Secretary of Labor, but in fact upon the determination of the officer who caused the charge to be placed against her, and who acted as complainant, arresting officer and Judge.

WHEREFORE, your petitioner prays that a writ of habeas corpus be issued by this Honorable Court, commanding the said Richard L. Halsey, United States Inspector-in-charge of Immigration at the port of Honolulu aforesaid, to have and produce the body of the said Kimi Yamamoto, your petitioner, before this Honorable Court, at the courtroom in the "Model Block," in the city of Honolulu, city and county of Honolulu, Territory of Hawaii, at the opening of Court on the — day of April, A. D. 1914, in order that the alleged cause of imprisonment and restraint and the legality thereof may be inquired into, and that in case said imprisonment and restraint are unlawful and illegal that your petitioner may be discharged therefrom.

KIMI YAMAMOTO.

(Signed in Japanese characters.)

Dated this 13th day of April, A. D. 1914. [12]

United States of America,
Territory of Hawaii,
City and County of Honolulu,—ss.

Kimi Yamamoto, being first duly sworn, deposes and says:

That she is the petitioner in the foregoing peti-

tion; that the same has been read and explained to her, that she knows the contents thereof and that the same is true, except as to those matters therein alleged upon information and belief, and as to those matters so alleged, she believes them to be true.

KIMI YAMAMOTO.

(Signed in Japanese characters.)

Subscribed and sworn to before me this 13th day of April, A. D. 1914.

[Seal] (Sgd.) P. SILVA,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

[Endorsed]: No. 91. (Title of Court and Cause.)
Petition for Writ of Habeas Corpus. Filed April
13, 1914. A. E. Murphy, Clerk. By (Sgd.) F. L.
Davis, Deputy Clerk. [13]

*In the United States District Court in and for the
District and Territory of Hawaii.*

In the Matter of the Application of KIMI YAMA-
MOTO, for a Writ of Habeas Corpus, Directed
to RICHARD L. HALSEY, United States
Inspector of Immigration at the Port of
Honolulu, Commanding and Directing Him to
have and Produce the Body of the Said KIMI
YAMAMOTO.

Writ of Habeas Corpus.

To Richard L. Halsey, Esq., U. S. Inspector of
Immigration in charge at the Port of Honolulu:
We command you that the body of Kimi Yamamoto

in your custody detained, as it is said, together with the day and cause of *his* caption and detention, you safely have before the Honorable Sanford B. Dole, Judge of our District Court of the United States, within and for the Territory of Hawaii, at 10 A. M., on Tuesday, the 14th day of April, 1914, to do and receive all and singular those things which the said Sanford B. Dole, Judge of our said District Court, shall then and there consider *him* in this behalf; and have you then and there the writ. [14]

WITNESS the Honorable SANFORD B. DOLE, Judge of the District Court of the United States for the Territory of Hawaii, this 13th day of April, 1914, and in the one hundred and thirty-eighth year of the Independence of the United States of America.

[Seal]

Attest: A. E. MURPHY,
Clerk.

By (Sgd.) F. L. Davis,
Deputy Clerk.

Let process issue as prayed for.

(Sgd.) S. B. DOLE,
U. S. Dist. Judge, Ter. Hawaii.

MARSHAL'S RETURN.

United States Marshal's Office.

The within petition, order and writ of habeas corpus were received by me on the 13th day of April, A. D. 1914, and are returned as executed on April 13, 1914, in Honolulu, by hand, upon Richard L. Halsey, United States Immigration Inspector-in-charge at the port of Honolulu, by exhibiting to him the orig-

inal and handing to and leaving with him a certified copy of the within petition, order and writ of habeas corpus.

E. R. HENDRY,
United States Marshal.
By (Sgd.) H. H. Holt,
Chief Office Deputy.

Dated Honolulu, T. H., April 14, 1914.

[Endorsed]: No. 91. (Title of Court and Cause.)

Writ of Habeas Corpus. Filed on Return April 14, 1914. A. E. Murphy, Clerk. By (Sgd.) Wm. L. Rosa, Deputy Clerk. [15]

Order Continuing Hearing, and That Applicants be Released on Furnishing of Bond.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court; Tuesday, April 14, 1914. Vol. 9, Part 1, Folio 105.

(Title of Court and Cause.)

On this day came the above applicant in person, and with his counsel Mr. J. W. Cathcart, and also came Mr. J. W. Thompson, Assistant United States Attorney, on behalf of the respondent herein, and this cause was called for hearing on respondent's return to the writ herein. Thereupon on motion of Mr. Thompson, and consent of Mr. Cathcart, it was by the Court ordered that this cause be continued until called for hearing, and that the said applicant be released upon furnishing a bond herein in the sum of \$250. [16]

*In the District Court of the United States for the
Territory of Hawaii.*

In the Matter of the Petition of KIMI YAMA-
MOTO, for a Writ of Habeas Corpus.

**Return of Richard L. Halsey to Order to Show
Cause.**

Comes now Richard L. Halsey, Inspector-in-charge, and in obedience to the order to show cause, heretofore issued in this case, hereby certifies and makes return to the Hon. S. B. Dole, Judge of the above-entitled court, as follows:

1. He admits that the petitioner is a Japanese alien resident of Honolulu, county of Honolulu, Territory of Hawaii, but does not know *that* date of her arrival, but presumes the statement in her petition is correct as to the date of the beginning of her residence; but he does deny the statement that she makes when she states she is not an alien resident that comes within the list prohibited by the laws of the United States.

2. He admits that he is the inspector-in-charge at the United States Immigration Station, at Honolulu, but denies her statement that her arrest and detention is "without authority," but on the contrary states that she was arrested [17] and is now detained under a warrant for her arrest, duly issued by the Secretary of Commerce and Labor of the United States on the 19th day of December, 1913, which secretary had full power and authority to issue said warrant, and being so directed by said

warrant she was arrested and is being detained.

3. The cause of the issuance of such warrant of arrest and deportation is based on the provisions of section 3 of the Act of Congress, as amended March 26th, 1910, entitled, "An Act to Amend an Act Entitled 'An Act to Regulate the Immigration of Aliens into the United States.' "

The petitioner in her petition for writ of habeas corpus, article 3, states, "she had not at or prior to the time of the making of said order of deportation hereinbefore referred to, or at the time of the issuance of the warrant of arrest, hereinafter referred to, practiced prostitution." On the 18th day of November, 1913, she signed a sworn statement before the Inspector of Honolulu, T. H., that she had been practicing prostitution and that she began to practice the same four years ago, and that she had practiced it thereafter; thereupon it was recommended that a warrant for her arrest be issued, and a warrant was thereupon issued on the 19th day of November, 1913, by the Secretary of Labor for the arrest of petitioner, and to grant her a hearing to enable her to show cause why she should not be deported in conformity with law.

She was arrested and given a hearing. Then followed a transmission of the records to the Secretary of Labor at Washington, D. C.; thereupon on the 24th day March, 1914, a warrant of deportation was issued by the aforesaid Secretary of Commerce and Labor.

Copies of warrant, orders, etc., filed in this cause are referred to and are made a part and parcel of this [18] answer.

He further alleges that petitioner was given a full, fair and impartial hearing, and that all records were duly transmitted to the Secretary of Labor and that all the proceedings of the above-styled cause were regular and in accordance with the Immigration laws and that she is not illegally restrained.

He therefore prays that the petition be dismissed and the petitioner be further remanded to respondent to be dealt with according to law.

May 22, 1914.

(Sgd.) RICHARD L. HALSEY,
Inspector-in-charge.

(Sgd.) J. W. THOMPSON,
Asst. United States Attorney. [19]

Testimony of Kimi Yamamoto.

COPY.

**DEPARTMENT OF LABOR.
IMIGRATION SERVICE.**

H. B. BROWN, Inspector.

T. KATSUNUMA, Interpreter.

M. SPALDING, Stenographer.

Port of Honolulu, T. H.

November 17, 1913.

Case of KIMI YAMAMOTO.

WITNESS sworn, testifies:

INSPECTOR: Q. What is your name?

WITNESS.—A. Kimi Yamamoto.

Q. How old are you? A. 35.

Q. Where were you born?

A. Nakajima Mura, Niigata Ken, Japan.

Q. When did you first come to Hawaii?

A. 15 years ago.

Q. What boat did you come on? A. Gaelic.

Q. What month? A. October.

Q. Did you come alone?

A. With my husband.

Q. What is his name?

A. Jiunsaku Hirosake.

Q. Are you still married to him?

A. I am divorced from him.

Q. Where is he now? A. In Japan.

Q. When did he go to Japan?

A. Ten years ago.

Q. Have you married again? A. No.

Q. Have you been living with a man named Okasaki? A. No.

Q. Since you and your husband separated have you had a sweetheart or paramour? A. No.

Q. Sure of that, are you? A. Yes.

Q. Been living all by yourself all this time?

A. Yes.

Q. What have you been doing for a living?

A. Practicing prostitution.

Q. When did you begin to practice prostitution?

A. 11 years ago, but not continually, sometimes stop several months.

Q. When was the last time you practiced prostitution?

A. Three months before you made the big raid.

Q. Why did you stop at that time?

A. I was suffering from eye trouble and I was under doctor's care. I heard that you were go-

ing to arrest and send prostitutes back to their own country so I stopped.

Q. What have you been doing since you stopped practicing prostitution?

A. I have nothing to do yet because my eyes are not well yet.

Q. What kind of sickness did you have in your eyes?

A. Trachoma and my eyesight is getting dull.

Q. Are you sure that you have not had a sweetheart or paramour? A. No, I have none.

Q. Are you saving your money all for yourself?

A. Well, I saved some money but sent some to Japan to my elder sister and my mother.

Q. Any further statement you wish to make?

A. No.

(Notes signed by witness in Japanese only.)

Copy of Japanese characters:

(Signature) KIMI YAMAMOTO.

November 17, 1913.

Certified Correct:

(Sgd.) MAURICE SPALDING,
Stenographer. [20]

Application for Warrant of Arrest.

COPY.

Form 565.

Application for warrant of arrest under Sections 20
and 21 of the Act of February 20, 1907.

U. S. DEPARTMENT OF LABOR.

Immigration Service.

4280/92

(Place) Port of Honolulu, T. H.,

November 17, 1913.

The undersigned respectfully recommends that the Secretary of Labor issue his warrant for the arrest of KIMI YAMAMOTO, the alien named in the attached certificate, upon the following facts which the undersigned has carefully investigated, and which, to the best of his knowledge and belief, are true:

(1) (Here state fully facts which show alien to be unlawfully in the United States. Give sources of information, and where possible, secure from informants and forward with this application duly verified affidavits setting forth the facts within the knowledge of the informants.)

That she is a prostitute and has been practicing prostitution, as shown by her own testimony.

(2) The present location and occupation of above-named alien are as follows:

Honolulu, T. H., nothing right now but last occupation was prostitution.

Pursuant to Rule 22 of the Immigration Regulations there is attached hereto and made a part hereof the certificate prescribed in subdivision 2 of said Rule, as to the landing or entry of said alien, duly

signed by the immigration officer in charge at the port through which said alien entered the United States.

(Signature) (Sgd.) RICHARD L. HALSEY,
(Official Title) Inspector-in-charge. [21]

COPY.

CERTIFICATE AS TO LANDING OF ALIEN.
DEPARTMENT OF LABOR.
IMMIGRATION SERVICE.

Port of Honolulu, T. H.,
November 17, 1913.

4280/92

I am unable to verify the landing of KIMI YAMAMOTO, an alien, at the present aime.

(Sgd.) RICHARD L. HALSEY,
Inspector-in-charge. [22]

Telegram, November 18, 1913, Halsey to
Immigration, Washington, D. C.

COPY.

CONFIRMATION OF TELEGRAM.
DEPARTMENT OF COMMERCE AND LABOR.
IMMIGRATION SERVICE.

No. 4280/92, 93.

Office of Inspector-in-charge,
Port of Honolulu, T. H.,
November 18, 1913.

IMMIGRATION WASHINGTON DC.

Wadding KIMI YAMAMOTO and CHIYE KAJI-KAMI Prognosis HALSEY.

(Interpretation of the code words "Wadding & Prognosis";

“Wadding”; Provisions of warrant regulations having been complied with and evidence forwarded by mail, warrant of arrest by telegraph requested in case of alien. . . .

“Prognosis”; Alien found practicing prostitution after entry.)

The above is an official copy of telegram sent this day.

(Sgd.) RICHARD L. HALSEY,

(Name)

Inspector-in-charge.

(11-4270)

(Title)

(Notation: Exact copy as signed by Richard L. Halsey, mailed Nov. 18, 1913, by Richard L. Halsey.)

[23]

**Cablegram, November 19, 1913, Acting Secretary to
Immigration, Honolulu.**

COPY.

CABLEGRAM.

Commercial Pacific Cable Co.

Received at 1.15 PM E

Nov. 19, 1913.

44 USG WASHINGTON DC 14

IMMIGRATION, HONOLULU

ARROW KIMI YAMAMOTO AND CHIYE KA-
JIKAMI PROGNOSIS.

LOUIS F. POST,

ACTING SECRETARY.

(Interpretation of code words “Arrow” and
“Prognosis”:))

“Arrow”: Arrest following-named alien (s) and
bring before yourself for hearing forwarding record

of proceedings to the Department.

“Prognosis”: Alien found practicing prostitution after entry. [24]

COPY.

Form 561. WARRANT—ARREST OF ALIEN.

UNITED STATES OF AMERICA,

DEPARTMENT OF LABOR,

No. 53678/567

WASHINGTON.

To Richard L. Halsey, Inspector-in-charge, Honolulu, T. H., or to any Immigrant Inspector in the Service of the United States.

Whereas, from evidence submitted to me, it appears that the alien KIMI YAMAMOTO and CHIYE KAJIKAMI, who landed at an unknown port, have been found in the United States in violation of the Act of Congress approved February 20, 1907, amended by the Act approved March 26, 1910, for the following among other reasons:

That the said aliens are prostitutes and have been found practicing prostitution subsequent to their entry into the United States.

I, Louis F. Post, Acting Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to take into custody the said aliens and grant them a hearing—to enable them to show cause *why should* not be deported in conformity with law.

The expenses of detention hereunder, if necessary, are authorized from the appropriation, “Expenses of Regulating Immigration 1914.” Pending further

proceedings the aliens may be released from custody upon furnishing satisfactory bond in the sum of \$1000 each.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 19th day of November, 1913.

WW.

(Signed) LOUIS F. POST,
Acting Secretary of Labor.

11-2719 [24a]

Letter, December 27, 1913, Immigrant Inspector to Sheldon.

COPY.

No. 4280/92.

Office of Inspector-in-charge.
Honolulu, Hawaii,
December 27, 1913.

W. J. Sheldon,

Attorney at Law,

Merchant St., Honolulu, T. H.

Sir: You are hereby notified that a further hearing in the case of KIMI YAMAMOTO will be held Tuesday, December 30th, 1913, at 2:00 P. M., at which time she will be given an opportunity to defend herself from the charge upon which she has been arrested.

Respectfully,

H. B. BROWN,
Immigrant Inspector. [25]

Letter, March 2, 1914, Sheldon to Inspector of Immigration.

COPY.

WM. JARRETT SHELDON,
Attorney,
Honolulu, T. H.

Honolulu, March 2d, 1914.

Department of Commerce and Labor,
Immigration Service.

To H. B. Brown, Esq.,
Inspector of Immigration,
Honolulu, T. H.

Dear Sir: In the case of Kimi Yamamoto, she has acknowledged to you that she has practiced prostitution for a number of years; that she was given a certificate of health by the local authorities; and did practice prostitution under police regulations; and was under the impression that it was not contrary to law; that since it has become known to her that in fact it was contrary to law, she has not since practiced prostitution.

And she humbly prays that if she be given her liberty, she will not commit any further violation of the law, to wit: the immigration laws of the United States.

And defendant will ever pray.

KIMI YAMAMOTO.

By Her Attorney,
WM. J. SHELDON. [26]

COPY.

DEPARTMENT OF LABOR.

In re:

KIMI YAMAMOTO, #4280/92

Port of Honolulu, T. H.

March 3d, 1914.

STATEMENT OF ATTORNEY W. J. SHELDON,
FOR DEFENDANT.

Attorney W. J. Sheldon appears and states that he does not desire to file any brief or furnish any further evidence in this case. [27]

Remarks by Immigrant Inspector.

COPY.

DEPARTMENT OF LABOR.

UNITED STATES IMMIGRATION SERVICE.

In re:

KIMI YAMAMOTO

Port of Honolulu, T. H.

No. 4280/92.

March 9th, 1914.

REMARKS BY EXAMINING INSPECTOR.

From the testimony offered in this case it appears that this woman is an alien and that she has been practicing prostitution. In my opinion she is a proper person for whom a warrant of deportation should issue.

(Sgd.) H. B. BROWN,
Immigrant Inspector. [28]

Form 562.

WARRANT—DEPORTATION OF ALIEN.
UNITED STATES OF AMERICA.

Department of Labor.

No. 53678/567.

To Richard L. Halsey, Inspector-in-charge, Honolulu, T. H.:

WHEREAS, from proofs submitted to me, after due hearing before Immigrant Inspector Harry B. Brown, held at Honolulu, T. H., I have become satisfied that the alien KIMI YAMAMOTO, or KIMI YAMAMOTO and CHIYE KAJIKAMI, who landed at the port of Honolulu, T. H., on the —— day of ——, have been found in the United States in violation of the Act of Congress approved February 20, 1907, amended by the Act approved March 26, 1910, to wit:

That the said aliens are prostitutes and have been found practicing prostitution subsequent to their entry into the United States, and may be deported in accordance therewith.

I, J. B. Densmore, Acting Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return the said aliens to Japan, the country whence they came, at the expense of the appropriation "Expenses of Regulating Immigration, 1914."

You are directed to purchase transportation for the aliens from Honolulu, T. H., to their home in Japan, at the lowest scheduled rate obtainable from the Pacific Mail Steamship Company, payable from

the above-mentioned appropriation.

For so doing, this shall be your sufficient warrant.

Witness, my hand and seal this 24th day of March, 1914.

[Seal] (Signed) J. B. DENSMORE,
Acting Secretary of Labor.

CEB.

11-2721. [29]

[Endorsed]: No. 91. (Title of Court and Cause.)
Return of Richard L. Halsey to Order to Show Cause.
Filed May 22, 1914. A. E. Murphy, Clerk. By
(Sgd.) F. L. Davis, Deputy Clerk. [30]

Order Continuing Hearing to December 9, 1914.

(DOLE, Presiding Judge.)

From the Minutes of the United States District
Court: Monday, December 7, 1914. Vol. 9,
Part 1, Folio 411.

(Title of Court and Cause.)

On this day came Mr. J. W. Thompson, Assistant
United States Attorney, on behalf of the respondent
herein, neither the above applicant or her counsel
being present, and this cause was called to be set
for hearing. Thereupon it was by the Court ordered
that this cause be continued to December 9, 1914, at
2 o'clock P. M., for disposition. [31]

Order Continuing Hearing to December 16, 1914.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Wednesday, December 9, 1914. Vol. 9, Part 1, Folio 414.

(Title of Court and Cause.)

On this day came Mr. J. W. Thompson, Assistant United States Attorney, on behalf of the respondent herein, neither the above applicant or her counsel being present, and this cause was called for hearing. Thereupon it was by the Court ordered that this cause be continued to December 16, 1914, at 10 o'clock A. M., for hearing. [32]

Order Continuing Hearing to December 18, 1914.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Wednesday, December 16, 1914. Vol. 9, Part 1, Folio 422.

(Title of Court and Cause.)

On this day came Mr. J. W. Thompson, Assistant United States Attorney, on behalf of the respondent herein, neither the above applicant or her counsel being present, and this cause was called for hearing. Thereupon it was by the Court ordered that this cause be continued to December 18, 1914, at 2 o'clock P. M., for hearing. [33]

Order Continuing Hearing to January 5, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District
Court: Friday, December 18, 1914. Vol. 9,
Part 1, Folio 427.

(Title of Court and Cause.)

On this day came Mr. J. W. Thompson, Assistant
United States Attorney, on behalf of the respondent
herein, neither the above applicant or her counsel
being present, and this cause was called for hearing.
Thereupon it was by the Court ordered that this
cause be continued to January 5, 1915, at 2 o'clock
P. M., for hearing. [34]

Order Continuing Hearing to January 23, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District
Court: Tuesday, January 5, 1915. Vol. 9,
Part 1, Folio 448.

(Title of Court and Cause.)

On this day came Mr. J. W. Cathcart, counsel for
the above applicant and also came Mr. J. W. Thomp-
son, Assistant United States Attorney, on behalf of
the respondent herein, and this cause was called for
hearing. Thereupon it was by the Court ordered
that this cause be continued to January 23, 1915, at
10 o'clock A. M., for hearing. [35]

Order Continuing Hearing to January 30, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, January 23, 1915. Vol. 9, Part 1, Folio 472.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, neither the above applicant or her counsel being present, and this cause was called for hearing. Thereupon on motion of Mr. McCarn, it was by the Court ordered that this cause be continued to January 30, 1915, at 10 o'clock A. M., for hearing. [36]

Order Continuing Argument to February 6, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, January 30, 1915. Vol. 9, Part 1, Folio 482.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, neither the above applicant or her counsel being present, and this cause was called for argument. Thereupon on motion of Mr. McCarn, it was by the Court ordered that this cause be continued to February 6, 1915, at 10 o'clock A. M., for argument. [37]

Order Continuing Argument to February 13, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, February 6, 1915. Vol. 9, Part 1, Folio 495.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, neither the above applicant or her counsel being present, and this cause was called for argument. Thereupon it was by the Court ordered that this cause be continued to February 13, 1915, at 10 o'clock A. M., for argument. [38]

Order Continuing Argument to February 27, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, February 13, 1915. Vol. 9, Part 1, Folio 508.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, neither of the above applicant or her counsel being present, and this cause was called for argument. Thereupon on motion of Mr. McCarn, it was by the Court ordered that this cause be continued to February 27, 1915, at 10 o'clock A. M., for argument. [39]

Order Continuing Argument to March 6, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Friday, February 26, 1915. Vol. 9, Part 1, Folio 525.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, whereupon it appearing to the Court that the above cause had been heretofore continued to February 27, 1915, at 10 o'clock A. M., for argument, it was by the Court ordered that the said cause be at this time continued to March 6, 1915, at 10 o'clock A. M., for such argument. [40]

Order Continuing Argument to March 13, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, March 6, 1915. Vol. 9, Part 1, Folio 535.

(Title of Court and Cause.)

The within cause being called on this day for argument and none of counsel for the respective parties being present, it was by the Court ordered that this cause be continued to March 13, 1915, at 10 o'clock A. M., for argument. [41]

Order Continuing Argument to April 10, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, March 13, 1915. Vol. 9, Part 1, Folio 543.

(Title of Court and Cause.)

On this day came Mr. J. W. Thompson, Assistant United States Attorney, on behalf of the respondent herein, neither the above applicant or her counsel being present, and this cause was called for argument. Thereupon it was by the Court ordered that this cause be continued to April 10, 1915, at 10 o'clock A. M., for argument. [42]

Order Continuing Argument to April 24, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, April 10, 1915, Vol. 9, Part 1, Folio 568.

(Title of Court and Cause.)

The within cause being called on this day for argument and none of counsel for the respective parties being present, it was by the Court ordered that this cause be continued to April 24, 1915, at 10 o'clock A. M., for argument. [43]

Order Continuing Argument to May 8, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, April 24, 1915. Vol. 9, Part 2, Folio 606.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, neither the above applicant or her counsel being present, and this cause was called for argument. Thereupon it was by the Court ordered that this cause be continued to May 8, 1915, at 10 o'clock A. M., for argument. [44]

Order Continuing Argument to May 22, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, May 8, 1915. Vol. 9, Part 2, Folio 646.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, neither the above applicant or her counsel being present, and this cause was called for argument. Thereupon it was by the Court ordered that this cause be continued to May 22, 1915, at 10 o'clock A. M., for argument. [45]

Order Continuing Argument to May 28, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Saturday, May 22, 1915. Vol. 9, Part 2, Folio 669.

(Title of Court and Cause.)

On this day came Mr. Jeff McCarn, United States Attorney, on behalf of the respondent herein, neither the above applicant or *his* counsel being present, and this cause was called for argument. Thereupon it was by the Court ordered that this cause be continued to May 28, 1915, at 2 o'clock P. M., for argument. [46]

In the District Court of the United States for the Territory of Hawaii.

In the Matter of the Petition of KIMI YAMAMOTO
for a Writ of Habeas Corpus.

**Traverse of the Return of Richard L. Halsey,
Respondent.**

To the Honorable SANFORD B. DOLE and the Honorable CHARLES CLEMONS, Judges of the United States District Court for the Territory of Hawaii.

Comes now the petitioner above named, Kimi Yamamoto, and for answer and traverse to the return of Richard L. Halsey, respondent above named, respectfully shows to this Court:

1. Petitioner denies that she is a resident alien

subject to the Immigration Laws of the United States of America, as alleged in paragraph 1 of said return. But petitioner alleges that she came to the Hawaiian Islands prior to the same being annexed to the United States of America, and while the Republic of Hawaii was the sovereign power of the territory of the Hawaiian Islands. [47]

2. Petitioner denies that she is being held and detained by virtue of any legal warrant of deportation. But alleges that the said warrant of deportation is illegal and void. Petitioner alleges that the hearing of her appeal from the decision of the Board of Special Inquiry and Harry B. Brown, Esq., an inspector of immigration at the port of Honolulu, to the Secretary of Labor was not heard or considered by the said Secretary of Labor or the Assistant Secretary of Labor, but by some other person designated as the Acting Secretary of the Department of Labor of the United States, and alleges that at the time the appeal was so considered by the said person so claiming to be Acting Secretary and at the time of the adjudication thereon and at the time of the issuance of the alleged warrant of deportation, the said secretary of the Department of Labor and the said Assistant Secretary of Labor of the United States of America were present at their posts in the city of Washington, District of Columbia, and were attending to the duties of their said office, and that the said person so claiming to be acting as Secretary of the Department of Labor had no right or authority in law to so act.

3. Petitioner denies all and singular the allega-

tions contained in paragraph 3 of said return.

4. Petitioner further alleges that she had no valid or legal or fair or impartial hearing before the said Board of Special Inquiry or Harry B. Brown, Esq., an inspector of immigration at the port of Honolulu; that there was no examination of the witnesses under oath and that petitioner was not allowed counsel, but on the contrary that she was arrested and examined and compelled to be a witness against herself, and counsel refused and denied to her, in violation of the [48] rights guaranteed to her by the Constitution of the United States.

5. Petitioner denies that she is a prostitute or has practiced prostitution as in said return alleged.

WHEREFORE, petitioner prays that she be discharged from the custody of the said Richard L. Halsey.

Dated May 27, 1915.

KIMI YAMAMOTO,
(Signed in Japanese characters),
Petitioner.

United States of America,
Territory of Hawaii,
City and County of Honolulu,—ss.

Kimi Yamamoto, being first duly sworn, deposes and says:

That she is the petitioner named in the foregoing traverse; that the same has been read and explained to her, that she knows the contents thereof and that the same is true, except as to those matters therein alleged upon information and belief, and as to those

matters she believes it to be true.

KIMI YAMAMOTO.

(Signed in Japanese characters.)

Subscribed and sworn to before me this 27th day of May, A. D. 1915.

(Sgd.) P. SILVA,
Notary Public, First Judicial Circuit, City and
County of Honolulu, Territory of Hawaii.

[Endorsed]: No. 91. (Title of Court and Cause.)
Traverse of the Return of Richard L. Halsey, Re-
spondent. Filed May 27, 1915, at 2 o'clock, 52 min-
utes P. M. A. E. Murphy, Clerk. By (Sgd.) F. L.
Davis, Deputy Clerk. [49]

Order of Submission of May 28, 1915.

(DOLE, Presiding Judge.)

From the Minutes of the United States District
Court: Friday, May 28, 1915, Vol. 9, Part 2, Folio
677.

(Title of Court and Cause.)

On this day came Mr. J. W. Cathcart, counsel for
the above applicant, and also came Mr. Jeff McCarn,
United States Attorney, on behalf of the respondent
herein, and this cause was called for argument.
Thereupon and after due argument by the respective
counsel, the Court ordered that the matters herein
be submitted on briefs. [50]

Order Re Filing of Opinion, etc.

(DOLE, Presiding Judge.)

From the Minutes of the United States District Court: Monday, August 2, 1915, Vol. 9, Part 2, Folio 739.

(Title of Court and Cause.)

On this day came Mr. J. W. Cathcart, counsel for the above applicant, and also came Mr. J. W. Thompson, Assistant United States Attorney, on behalf of the respondent herein, and this cause was called for decision. Thereupon the Court read and filed its decision herein discharging the said applicant under the writ herein, and ordering that said applicant's bond be cancelled and the sureties thereon discharged. [51]

In the United States District Court for the Territory of Hawaii.

April, A. D. 1915, Term.

No. 75.

In the Matter of the Application of SUI JOY for a Writ of Habeas Corpus.

(Also WONG YUEN, No. 74.)

(Also CHING LUM, No. 73.)

(Also KIMI YAMAMOTO, No. 91.)

Opinion on Demurrer to Return to Writ of Habeas Corpus.

August 2, 1915.

Immigration—Deportation—Entering the United

States: An alien who came to the Hawaiian Islands previous to their annexation to the United States, and was living there at the time of such annexation, cannot be said to "have entered the United States" within the meaning of section 3 of the act of February 20, 1907, as amended by the act of March 26, 1910, 36 Stat. 263.

Same—Same—Same—Actual landing subject to statutory conditions: The provisions of the said statute for the deportation of aliens found "to be unlawfully within the United States," presume an actual landing of such aliens, subject to the conditions as to conduct set forth in the statute.

Habeas Corpus: On demurrer to return.

THOMPSON, WILDER, WATSON & LYMER,
for Petitioners Sui Joy, Wong Yuen, and
Ching Lum.

J. W. CATHCART, for Petitioner Kimi Yamamoto.

JEFF McCARN, United States District Attorney, for Respondent. [52]

In the first three of the above cases demurrers to the petitions were overruled, whereupon the respondent filed his returns which were demurred to by the petitioners, the fifth ground of demurrer being as follows: "That it does not appear in the said return that the said Sui Joy is an alien who has ever entered the United States within the meaning of the law herein provided." In the fourth case, the petitioner filed a traverse to the return of the respondent, in which, among other things, she raised the

same point as raised on the fifth ground of the said demurrers, to wit, that she was not subject to the immigration laws of the United States, having come to the Hawaiian Islands while they were under the jurisdiction of the Republic of Hawaii.

The argument on this point is, briefly, that the petitioners, having come to the Hawaiian Islands previous to annexation, as alleged, and being domiciled residents here at the time of annexation, the statute does not apply to them, such persons, although aliens, not having "entered" the United States.

The following is the immigration rule applying to these cases:

"The application must state facts bringing the alien within one or more of the classes subject to deportation after entry. The proof of these facts should be the best that can be obtained. The application must be accompanied by a certificate of landing (to be obtained from the immigration officer in charge at the port where landing occurred), or a reason given for its absence, in which case effort should be made to supply the principal items of information mentioned in the blank form provided for such certificates. Telegraphic application may be resorted to only in case of necessity and must state (1) that the usual written application has been made and forwarded by mail, and (2) the substance of the facts and proof therein contained." Immigration Rule 22, subdivision 2.

The statute under which the petitioners are held is a part of section 3 of the act of February 20, 1907, as amended by the act of March 26, 1910, 36 Stat. 263. It is as follows:

“Any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution *after such alien shall have entered the United States*, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute, or who is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists, protects, or promises to protect from arrest any prostitute, shall be deemed to be unlawfully within the United States and shall be deported in the manner provided by sections 20 and 21 of this act.”

The demurrers are allowed on the fifth ground. It is obvious from a reading of division 2 of Immigration Rule 22, above quoted, that the Commissioner General of Immigration and the Secretary of Labor, who are authorized by the Immigration Act of February 20, 1907, 34 Stat. 898, sec. 22, to establish rules for carrying out the provisions of the act, have constructed the act on the point referred to, as meaning an actual entry or landing in the United States. The said division 2 of the 22d rule, in providing for an application by the immigration officers to the Secretary of Labor for authority to arrest an alien

suspected of being unlawfully in the United States, requires, among other things, that the application "shall be accompanied by a certificate of landing (to be obtained from the immigration officer in charge at the port where the landing occurred), or a reason given for its absence." Of course, this can refer to nothing else than an actual landing in the United States. This construction is rendered still more positive by the "certificate of landing," required by the rule to accompany the application. The blank form provided by the Secretary of Labor and the Commissioner [54] General of Immigration under the authority of the statute, is as follows: "Form 564.

Certificate as to Landing of Alien.

(To accompany application for warrant of arrest)

DEPARTMENT OF COMMERCE AND LABOR.

Immigration Service.

———, 190—.

I hereby certify that I have examined the records of the immigrant station at —— with reference to the record of the landing or entry of ——, an alien, and that the following facts relative to such landing or entry are disclosed by said records.

- (1) Name of alien, ——; age, ——; sex, ——.
- (2) Race, ——; country whence alien came, ——.
- (3) Exact date and port of arrival in the United States, ——.
- (4) Name of vessel and line, —————
(If alien arrived via Canada or Mexico, so state.)

- (5) Destination, —.
- (6) Occupation, —; money brought, \$—.
- (7) By whom passage paid, —.
- (8) Whether ever in United States before, —.
- (9) Whether inspected at time of arrival, —.

(If held for special inquiry, so state.)

Remarks:_____

(Signature)_____

(Official title)_____”

Such construction, being authoritative and official, is entitled to great weight. Endlich's Interpretation of Statutes, s. 357.

Counsel in the Sui Joy, Ching Lum and Wong Yuen cases, set forth somewhat exhaustively the constitutional argument that Congress derived its power to legislate as to immigrant aliens after being admitted, solely from section 8 of the first article of the Constitution of the United States, which gives it the power “to regulate commerce with foreign nations.” Quoting from the brief, “the [55] theory is that commerce with foreign nations includes not only an exchange of commodities, but also the importation or incoming of passengers. The proposition that Congress has no power to regulate the affairs of individual persons in the United States except as incidental to some one of the powers expressly given to it by the Constitution, is fundamental.” It follows, therefore, that whereas Congress may permit an alien immigrant to land under certain conditions as to conduct thereafter while

in the country, involving forcible deportation upon his failure to conform to such conditions, it may not deport alien residents for similar conduct, with whom there has been no such conditional entry into the United States. In other words, an alien resident of the United States in regard to whom there was no condition as to his conduct during his residence, that was made the basis of his landing or entry into the country by a then existing statute, is not within the scope of section 3 of the Immigration Act of February 20, 1907, as amended by the act of March 26, 1910. Plainly the law does not affect persons who have not *entered* the United States previous to doing the acts charged. These petitioners all claim to have been living in Hawaii before and at the time of annexation. In matters of immigration the word *enter* has not acquired a technical meaning. It would appear that these cases might well have been disposed of on their inception, on the ground that the statute is too clear to require interpretation. "*Absoluta sententia expositore indiget.*" Potter's Dwarrris, 128; Vattel's first rule, id. 126.

As the ruling on this ground of the demurrer disposes of the cases, the Court need not consider the [56] other grounds.

It is not clear whether there remains a question of fact to be decided. The returns in the first three cases do not specifically deny the allegations of residence in Hawaii before annexation, but make a general denial of all further allegations and averments of said petitions necessary to be denied. The return in the fourth case accepts the allegation of

the petition in that case that the petitioner arrived in Hawaii in the year 1897, as correct. She (Kimi Yamamoto) is, therefore, under the foregoing conclusions, entitled to her discharge under the writ, which is hereby ordered.

If the respondent desires to contest the allegations of residence in Hawaii, in the three first cases, an opportunity will be given, otherwise such petitioners will be discharged.

(Sgd.) SANFORD B. DOLE,
Judge of the United States District Court for the
Territory of Hawaii. [57]

Supplementary Decision.

On the afternoon of the day the foregoing decision was given in open court, counsel on both sides filed the following stipulation:

“It is hereby stipulated and agreed by and between the United States of America through J. W. Thompson, its Assistant District Attorney of the District and Territory of Hawaii, and Sui Joy, Ching Lum and Wong Yuen, by their attorneys, Thompson & Milverton, that each of said petitioners were residents of the Hawaiian Islands for a period of more than five (5) years prior to the 15th day of June, A. D. 1900.”

By which stipulation it would appear that the said petitioners were resident here for over three years before the annexation of Hawaii to the United States, which took place August 12, 1898. The court was thereupon prepared to order the discharge of the petitioners, according to the conclusions of the fore-

going decision, but before such order was effectuated the assistant district attorney, acting for the respondent, moved the court for an opportunity of showing that the petitioners severally visited China after annexation and returned again to Hawaii.

Such motion must be denied, inasmuch as the cases contain no pleadings which would form a basis for such testimony,—as there is no showing that such information is newly discovered and as such information, if it exists, obviously has been, during the pendency of these proceedings, within the reach of the respondent.

The writs are made absolute and the petitioners discharged.

Honolulu, T. H., August 4, 1915.

(Sgd.) SANFORD B. DOLE,

Judge of the United States District Court for the
Territory of Hawaii. [58]

[Endorsed]: No. 91. (Title of Court and Cause.)
Decision of Dole, J., on Demurrer to Return. Filed
Aug. 2, 1915. A. E. Murphy, Clerk. By (Sgd.)
F. L. Davis, Deputy Clerk, and Supplementary Deci-
sion. Filed Aug. 9, 1915. A. E. Murphy, Clerk. By
(Sgd.) Wm. L. Rosa, Deputy Clerk. [59]

*In the United States District Court for the Territory
of Hawaii.*

October, A. D. 1915, Term.

No. 91.

In the Matter of the Application of KIMI YAMA-
MOTO for a Writ of Habeas Corpus.

Judgment.

At the regular April, A. D. 1915, term of the District Court of the United States in and for the District and Territory of Hawaii, held in the courtroom of said court, city and county of Honolulu, in the Territory of Hawaii and the District aforesaid, on the 2d day of April, A. D. 1915, the above-entitled matter having heretofore been heard on the pleadings, evidence adduced before the Court, and argument of counsel for the respective parties, and due deliberation thereon, the Court finds that the above-named petitioner, Kimi Yamamoto, is entitled to be discharged, subject to the taking of an appeal by the respondent herein, Richard L. Halsey, in which case the said applicant Kimi Yamamoto will be required to give recognizance with surety in the sum of \$500 to answer the judgment of the appellate court.

NOW, THEREFORE, it is hereby ordered, adjudged and decreed that the above-named petitioner, Kimi Yamamoto be, and *he* is hereby discharged from custody herein, subject to the taking of an appeal, and subject to exception by the United States of America.

And the Court being advised that the above-entitled cause will be removed to the appellate court by proper proceedings [60] to be had in that behalf, does hereby further order, adjudge and declare that the above-named Kimi Yamamoto give *his* recognizance with surety in the sum and amount of \$500, to answer the judgment of the appellate court.

Given, made and dated at Honolulu, Territory and District aforesaid, this 16th day of December, A. D. 1915.

(Sgd.) SANFORD B. DOLE,
Judge, U. S. District Court.

[Endorsed]: No. 91. (Title of Court and Cause.)
Judgment. Entered in J. & D. Book, 2 folio, 657.
Filed Dec. 16, 1915. F. L. Davis, Clerk. By (Sgd.)
Ray B. Rietow, Deputy Clerk. [61]

*In the United States District Court for the Territory
of Hawaii.*

In the Matter of the Petition of KIMI YAMA-
MOTO for a Writ of Habeas Corpus.

Petition for Appeal.

To the Honorable CHARLES F. CLEMONS, Judge
of the Above-entitled Court:

The United States of America, by its attorney, Horace W. Vaughan, conceiving itself aggrieved by the order and judgment made and entered on the 16th day of December, A. D. 1915, in the above-entitled proceeding, does hereby appeal from the said order and judgment to the Circuit Court of Appeals for the Ninth Circuit, and files herewith its assignment of errors intended to be urged upon appeal, and it prays that its appeal may be allowed, and that a transcript of the record of all proceedings and papers upon which said order and judgment was made, duly authenticated, may be sent to the Circuit Court of Appeals for the Ninth Circuit of the United States.

Dated this 31 day of January, A. D. 1916.

(Sgd.) HORACE W. VAUGHAN,
United States Attorney.

Received a copy of the above petition:

By Her Attorneys,

[62]

[Endorsed]: No. 91. (Title of Court and Cause.)
Petition for Appeal. Filed Feb. 15th, 1916. (Sgd.)
F. L. Davis, Clerk. [63]

*In the United States District Court for the Territory
of Hawaii.*

In the Matter of the Petition of KIMI YAMA-
MOTO for a Writ of Habeas Corpus.

Order Allowing Appeal.

Upon application and motion of Horace W.
Vaughan, United States Attorney for the Dis-
trict and Territory of Hawaii:

IT IS HEREBY ORDERED, that the petition
for appeal, heretofore filed herein by the United
States of America, be, and the same is hereby
granted; and that an appeal to the United States Cir-
cuit Court of Appeals for the Ninth Circuit from the
final order and judgment heretofore, on December
16th, 1915, filed and entered herein, be and the same
is hereby allowed, and that a transcript of the record
of all proceedings and papers upon which said final
order and judgment was made, duly certified and au-
thenticated, be transmitted, under the hand and seal
of the clerk of this court, to the United States Cir-

cuit Court of Appeals for the Ninth Judicial Circuit of the United States, at San Francisco, in the State of California.

Dated, this 31st day of January, A. D. 1916.

(Sgd.) CHAS. F. CLEMONS,
Judge, U. S. District Court.

Received a copy of the above order:

By Her Attorneys.

[64]

[Endorsed]: No. 91. (Title of Court and Cause.)
Order Allowing Appeal. Filed Feb. 15th, 1916.
(Sgd.) F. L. Davis, Clerk. [65]

*In the United States District Court for the Territory
of Hawaii.*

In the Matter of the Application of KIMI YAMA-
MOTO for a Writ of Habeas Corpus.

Assignment of Errors.

And now comes the United States of America, by Horace W. Vaughan, its attorney, and says that in the record and proceedings in the above-entitled matter there is a manifest error and that the final record and judgment, made and entered in said matter on the 16th day of December, A. D. 1915, is erroneous and against the just rights of the said United States, in this, to wit:

I.

That the Court erred in assuming jurisdiction of this matter because the same involved a determination of facts, which facts had been submitted to the

Secretary of Labor after a due and proper hearing before the Inspector of Immigration at the port of Honolulu, and this Court had no jurisdiction or authority to further inquire into the facts found, nor to assume jurisdiction upon the matter in controversy.

II.

That the Court erred in holding that because the petitioner had been an alien resident in the Hawaiian Islands, Republic of Hawaii, and not then within the jurisdiction of this court before the year 1897, and because the now Territory of Hawaii was not at that time an integral part of the United States of America, nor a territory [66] thereof, the laws of the United States providing for the entry of aliens into the United States, or the deportation of aliens from the United States, or any of its territories, did not apply.

III.

That from the evidence submitted to the Secretary of Labor, it was established beyond doubt that there was evidence to prove that the petitioner was a prostitute and engaged in prostitution subsequent to her entry into the United States, the Court nevertheless held that because she had resided within the Republic of Hawaii in the year 1897, she was not liable to deportation, although she might carry on her prostitution in defiance of the law, although since the annexation of the Republic of Hawaii, and since this proceeding was begun, she was within the jurisdiction of this court.

IV.

That it was admitted by the alien petitioner, and by her attorneys, that she was an alien, and the court erred in holding that notwithstanding said admission, that she was not amenable to the Immigration Laws of the United States by reason of the fact that she had lived in the Territory of Hawaii before said Territory of Hawaii became an integral part of the United States.

WHEREAS, by the law of the land, the said application for a writ of habeas corpus should have been denied, and the said writ of habeas corpus should have been discharged, and the said applicant and petitioner should have been remanded to be dealt with according to law.

And the aforesaid United States of America now prays that the order and judgment of December 16th, 1915, hereinabove mentioned, may be reversed, annulled, and held for naught, and that it, said United States, may have such other and further relief as may be proper in the premises. [67]

Dated this 31 day of January, A. D. 1916.

(Sgd.) HORACE W. VAUGHAN,
United States Attorney.

Received a copy of the above assignment of errors:

By Her Attorney,

[Endorsed]: No. 91. (Title of Court and Cause.)
Assignment of Errors. Filed Feb. 15th, 1916.
(Sgd.) F. L. Davis, Clerk. [68]

*In the United States District Court for the Territory
of Hawaii.*

In the Matter of the Application of KIMI YAMA-
MOTO, for a Writ of Habeas Corpus.

Citation on Appeal.

United States of America,—ss.

The President of the United States, to Kimi Yamamoto, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to an order allowing an appeal, filed in the clerk's office of the United States District Court for the Territory of Hawaii, wherein the United States of America is appellant, and you, Kimi Yamamoto, are appellee, to show cause, if any there be, why the judgment in said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States of America, this 31st day of January, A. D. 1916, and the Independence of the United States the one hundred and fortieth.

CHAS. F. CLEMONS,
Judge U. S. District Court.
Attest: F. L. DAVIS,
Clerk U. S. District Court.

Received a copy of the within citation:

By Her Attorneys,

[Endorsed]: No. 91. In the District Court of the United States for the Territory of Hawaii. In the Matter of the Application of Kimi Yamamoto for a Writ of Habeas Corpus. Citation on Appeal. Filed Feb. 15th, 1916. F. L. Davis, Clerk. By _____, Deputy. [69]

In the United States District Court for the Territory of Hawaii.

In the Matter of the Application of KIMI YAMAMOTO, for a Writ of Habeas Corpus.

Praeceptum for Transcript.

To the Clerk of the Above-entitled Court:

You will please prepare transcript of the record in this cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and include in said transcript the following pleadings, proceedings and papers on file, to wit:

1. Petition for Writ of Habeas Corpus; filed April 13, 1914.
2. Writ of Habeas Corpus; filed April 14, 1914.
3. Return of Richard L. Halsey to Order to Show Cause; filed May 22, 1914.
4. Traverse to the Return of Richard L. Halsey, respondent; filed May 27, 1915.

5. Decision on Demurrer to Return; filed August 2, 1915.
6. Supplementary Decision; filed August 9, 1915.
7. Judgment; filed December 16, 1915.
8. Petition for Appeal; filed February 15, 1916.
9. Order Allowing Appeal; filed February 15, 1916.
10. Assignment of Errors; filed February 15, 1916.
11. Citation on Appeal; filed February 15, 1916.
12. All minute entries in above-entitled cause.
13. This Praecipe. [70]

Said transcript to be prepared as required by law and the rules of this Court, and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and filed in the office of the clerk of said Circuit Court of Appeals at San Francisco, before the 15th day of March, A. D. 1916.

THE UNITED STATES OF AMERICA.

By (Sgd.) HORACE W. VAUGHAN,
United States Attorney.

[Endorsed]: No. 91. (Title of Court and Cause.)
Praecipe for Transcript. Filed Feb. 15, 1916.
(Sgd.) F. L. Davis, Clerk. [71]

*In the District Court of the United States in and for
the District and Territory of Hawaii.*

No. 91.

In the Matter of the Petition of KIMI YAMA-
MOTO, for a Writ of Habeas Corpus.

United States of America,
District of Hawaii,—ss.

**Certificate of Clerk, U. S. District Court to
Transcript of Record.**

I, George R. Clark, Clerk of the District Court of the United States for the Territory of Hawaii, do hereby certify the foregoing pages, numbered from 1 to 72, inclusive, to be a true and complete transcript of the record and proceedings had in said court in the matter of the Petition of Kimi Yamomoto for a writ of habeas corpus, as the same remains of record and on file in my office, and I further certify that I hereto annex the original citation on appeal and three (3) orders extending time to transmit record on appeal in said cause.

I further certify that the cost of the foregoing transcript of record is \$15.85, and that said amount has been charged by me in my account against the United States.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 23d day of May, A. D. 1916.

[Seal] GEORGE R. CLARK,
Clerk, United States District Court, Territory of
Hawaii. [72]

[Endorsed]: No. 2803. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Appellant, vs. Kimi Yamamoto, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Territory of Hawaii.

Filed June 2, 1916.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.